UNITED
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AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 531

Case No. 561: HALLIN

Against: The United Nations Joint Staff Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Roger Pinto, President; Mr. Jerome Ackerman, Vice-President; Mr. Samar Sen;

Whereas, on 20 April 1990, Gunnar Hallin, the recipient of a retirement benefit paid by the United Nations Joint Staff Pension Fund (the Pension Fund), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 27 July 1990, the Applicant, after making the necessary corrections, again filed an application containing pleas which read in part as follow:

"PLEAS

(a) Preliminary Measures Requested

It is requested that the Tribunal order the following documents to be produced:

(i) The request likely to have been made by UNDTCD [United Nations Department of Technical Co-operation for Development] in July 1982 in accordance with Section H.3(a) of The Administrative Rules of the United Nations Joint Staff Pension Fund for a determination of incapacity for the purpose of benefits under article 33(a) of the Regulations of the Fund (...). The assumption that such a request was

made is based on the contents of the letter which UNCTCD addressed to the Applicant on 23 July 1982 (...).

(ii) The determination of the Staff Pension Committee in response to the UNDTCD request, if made.

(iii) The Exit Medical Certificate issued by Doctor S.S. Rikhy (medical practitioner on the panel of United Nations Approved Examining Physicians in India), D-105 Defence Colony, New Delhi-110003, India, reporting on the Applicant's state of health and fitness on 10 August 1982.

(iv) The Medical Report issued by the ad hoc United Nations Medical Board which was convened at the Sophiahemmet Hospital in Stockholm on 8 September 1986 for a review of the medical aspects of the Applicant's case, including a thorough physical examination of the degree of his disability.

(v) A statement by the United Nations Medical Director under Rules 204.6(a) and 204.6(b) of the Staff Rules (...) with an assessment of the Applicant's fitness, or lack thereof, at his separation from United Nations service in July 1982 for living, working and travelling under conditions similar to those of all of his five assignments as geophysicist in the service of the United Nations from 1969 to 1982 (...).

(vi) The parts of relevance for this case of the Minutes of the Meetings of

- The United Nations Staff Pension Committee at its 219th meeting on 16 January 1985;

- The United Nations Staff Pension Committee at its 234th meeting on 24 November 1987;

- The Standing Committee of the United Nations Joint Staff Pension Board at its 170th meeting on 20 February 1990.

(b) Decision contested.

The following decision is contested and its rescission is requested under article 9, paragraph 1 of the Statute of the Tribunal:

The decision of the Standing Committee of the United Nations Joint Staff Pension Fund at its 170th meeting

> on 20 February 1990 to uphold the decision of the United Nations Joint Staff Pension Committee at its 219th meeting on 16 January 1985, confirmed upon review at the Committee's 234th meeting on 24 November 1987, and to conclude that the Applicant did not meet the requirements under article 33(a) of the Fund's Regulations and therefore was not entitled to a disability benefit from the Fund (...).
>
> (c) ...
>
> (d) Amount of Compensation Claimed
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> The Applicant's request for compensation is for a disability benefit under articles 33(a), (b), (c) and (f) of the Regulations of the Fund (...), in lieu of his present deferred retirement benefit, which is based on his contributory service of twelve years, five months and eleven days (...). Under article 33(c) of the Regulations such disability benefit should be payable at the rate of the deferred retirement benefit which would have been payable had the Applicant remained in United Nations service until age 60 and had his final average remuneration remained unchanged, i.e. the period of contributory service should be extended to include the time from his separation from United Nations service on 22 July 1982 until he reached age 60 on 26 December 1987. This additional period comprises five years, five months and sixteen days. Under article 33 the disability benefit should be payable from the day of the Applicant's separation from United Nations service on 22 July 1982.
>
> Under article 33(f) of the Regulations the Board may prescribe the extent to which and the circumstances in which a disability benefit may be reduced when the beneficiary, although remaining incapacitated within the meaning of the article, is nevertheless in paid employment. The question of such a reduction in the present case is discussed in ..."

Whereas, on 27 March 1991, the Respondent filed his answer;

Whereas, on 25 April 1991, the Applicant requested postponement of his case in order to file written observations on the Respondent's answer;

Whereas, on 3 May 1991, the Tribunal granted the Applicant's request for postponement until its next session in October 1991;

Whereas the Applicant filed written observations on 22 July 1991;

Whereas the Applicant submitted an additional written statement on 14 October 1991;

Whereas the facts in the case are as follows:

The Applicant, a former staff member of the United Nations, was a participant in the Pension Fund from 5 August 1969 until 22 July 1982, the period during which he was employed under a series of fixed-term appointments.

On 14 February 1980, the Applicant, a geophysicist by profession, was involved in an automobile accident in India. The accident was subsequently deemed to be service-incurred and the Applicant was compensated under Appendix D to the UN Staff Rules ("Rules Governing Compensation in the Event of Death, Injury or Illness Attributable to the Performance of Official Duties on Behalf of the United Nations", ST/SGB/Staff Rules/Appendix D/Rev.1 of 1 January 1966). In October 1980, i.e., about eight months after the accident, the Applicant returned to his post in India and continued to perform his functions, in a limited way due to his handicap, on a series of four contracts respectively of one-year's, one-year-and-three-months', five-months' and one-month's duration, until his separation from service on 22 July 1982, upon the expiration of his last appointment. He asserts that had special provision for his physical handicap not been arranged, he would have been unable to resume his duties at all and that "medical clearance would not have been granted, had [he] finally applied following [his] separation in July 1982". Before the expiration of his last contract, he was informed that there were no posts available for him at that time.

By a letter dated 8 March 1984 to the Secretary of the Pension Fund, the Applicant requested that he be considered for the award of a disability benefit from the Pension Fund, but he was informed that the UN Medical Director had indicated that he would not be able to recommend a disability benefit. The Applicant then submitted additional supporting documentation on 12 August 1984. On 16 January 1985, the UN Staff Pension Committee decided unanimously that the Applicant was not entitled to a disability benefit from the Pension Fund as, on the date of his separation from UN service on 22 July 1982, he had not been incapacitated for further service within the meaning of article 33(a) of the Fund Regulations. On 28 January 1985, the Secretary of the UN Staff Pension Committee informed the Applicant of the Committee's decision.

By a letter dated 1 July 1985, the Applicant requested the UN Staff Pension Committee to review its decision of 16 January 1985. At the Applicant's request a medical board was established pursuant to Administrative rule K.7 of the Pension Fund. The Board was composed of Dr. Ulf Nilsonne of Stockholm, Sweden, selected by the Applicant, Dr. Michael Irwin, the UN Medical Director, and Dr. Ben Veraart, selected in agreement by the other two.

The Medical Board met in Stockholm, Sweden, on 8 September 1986. Its conclusions read as follows:

> "From the 17 December 1982 report by Dr. Fellander (who examined Mr. Hallin on 14 December 1982), the Board noted that, based upon the measurements given, Mr. Hallin had, at that time, a partial disability due to a 25% impairment of his right leg (or 10% of the whole person) and a 20% impairment of his right arm (or 12% of the whole person) - using the 2nd edition [issued in '84] of the AMA [American Medical Association] Guides to the Evaluation of Permanent Impairment for these calculations.
>
> On 8 September [1986], the Board agreed that Mr. Hallin had the following impairments (...)
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> ...
>
> ... a 54% impairment of the right leg (or 22% of the whole person).
>
> ...
>
> ... [and] a 20% impairment of the right arm (or 12% of the whole person)."

On 24 November 1987, the UN Staff Pension Committee unanimously confirmed its earlier decision denying the Applicant's request for a disability benefit. By a letter dated 8 December 1987, the Secretary of the Committee informed the Applicant of the Committee's decision. Without renouncing his claim for a disability benefit under article 33 of the Fund Regulations, the Applicant elected a deferred retirement benefit under article 30 of the Fund Regulations, the payment of which commenced effective 27 December 1987, the day following the Applicant's 60th birthday.

By a letter dated 22 August 1989, the Applicant lodged an appeal to the Standing Committee of the United Nations Joint Staff Pension Board (UNJSPB) against the decision of the UN Staff Pension Committee. On 4 October 1989, the Secretary of UNJSPB asked the Applicant why he had delayed filing his appeal and informed him of his right to request that a new medical board be established to assist the Standing Committee in its consideration of the case. After an exchange of letters with the Secretary, the Applicant, in a letter of 16 January 1990, decided against requesting the establishment of a new medical board.

On 20 February 1990, at its 170th meeting, the Standing Committee of UNJSPB considered the Applicant's appeal against the decision of the UN Staff Pension Committee. At this meeting, the Standing Committee considered, in addition to the documentation of the case, an assessment made on 7 February 1990 by the Medical Consultant to UNJSPB, Dr. Ingrid Laux, based on the available medical evidence and the documentation advanced by the Applicant in support of his appeal, which assessment reads as follows:

> "... I have reviewed again the medical documentation on Mr. Hallin regarding his possible entitlement to a disability benefit.
>
> According to my opinion, Mr. Hallin was not disabled according to article 33(a) at the time of his separation from the Organization on 22 July 1982, and is therefore not entitled to a disability benefit."

The Standing Committee unanimously decided to uphold, on the merits, the decision of the UN Staff Pension Committee contested by the Applicant. On 7 March 1990, the Secretary of UNJSPB informed the Applicant of the Standing Committee's decision.

On 27 July 1990, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

The Applicant was incapacitated on the date of his separation from service within the meaning of article 33 of the Regulations of the Pension Fund and was thus entitled to a disability benefit, rather than a deferred retirement benefit.

Whereas the Respondent's principal contentions are:

1. The Applicant was not "incapacitated for further service" on his date of separation.

2. The Applicant was accorded due process.

The Tribunal, having deliberated from 13 to 27 May 1991 in Geneva and on 22 and 23 October 1991 in New York, now pronounces the following judgement:

I. The application in this case challenges a decision of the Standing Committee of the United Nations Joint Staff Pension Board upholding a denial by the United Nations Staff Pension Committee of the Applicant's request for award of a disability benefit. The Tribunal has examined whether the challenged decision represented non-observance of the Regulations and Rules of the Pension Fund.

II. The central question is whether, at the time the Applicant was separated from UN service on 22 July 1982, he was "incapacitated for further service in a member organization reasonably compatible with his abilities" as provided in article 33(a) of the Fund Regulations. A Medical Board was convened to assist the UN Staff Pension Committee in considering the medical aspects of the case. That Board concluded that, on 8 September 1986, the Applicant was, as a result of a 1980 service-incurred injury, disabled to the extent of 22% of the whole person due to a right ankle injury, and 12% of the whole person because of right elbow injury. The Board's report also indicated pain and impairment associated with movement of the Applicant's right hip. No view was expressed in the report on the Applicant's condition at the time of his separation from service in July 1982. Nonetheless, the Board members noted that subsequent to the Applicant's separation, his employment had been sedentary in nature.

III. After the Applicant's accident, he evidently recovered from his injuries sufficiently to enable him to resume his prior employment with the United Nations and to perform the functions required of him satisfactorily.

He asserts that this was possible only because, despite partial disability due to his 1980 injury, the nature of his duties was changed in a way that made them less arduous and less demanding physically than the full range of duties expected of a field engineer. He received four extensions of his contract: one for a year, one for three months, one for almost five months and another for one month. After he separated, he was reported as having been found by the UN Medical Director to be medically eligible for re-employment by the United Nations.

IV. The Applicant's separation from UN service resulted from the expiration of his fixed-term contract. In addition, the Organization had at that time no other vacant position for him to fill.

V. The Applicant does not raise any question about the reason for his separation or the unavailability at that time of a position reasonably compatible with his abilities. His contention rests on the assumption that article 33(a) benefits should be provided to him because he is now, and has for some time since his separation been, physically unable to do the field work he used to do as an exploration geophysicist. His physical inability, he states, was the result of his service-incurred injury in 1980. In the view of the Tribunal, the benefits under article 33(a) are payable only when it is established that, at the time of separation, the participant in the Fund was "incapacitated for further service ... reasonably compatible with his abilities". It was not established in this case that the Applicant had at the time of his separation become thus incapacitated.

VI. The Tribunal has considered the Applicant's request, in his pleas dealing with "preliminary measures", for the production of certain documents. The documents requested in subsections (iii) and (iv) of those pleas have been furnished. In the circumstances, the Tribunal does not consider that the remaining documents, to the extent that they may exist and have not already been furnished, need be produced.

VII. For the foregoing reasons, the application is rejected.

(Signatures)

Roger PINTO
President

Jerome ACKERMAN
Vice-President

Samar SEN
Member

New York, 23 October 1991

Jean Hardy
Acting Executive Secretary